

**IN THE HIGH COURT FOR THE STATES OF PUNJAB & HARYANA
AT CHANDIGARH**

...

CRIMINAL APPEAL NO.460-DBA OF 1997.

Balwant Singh

...Appellant

VERSUS

Sewa Singh and others.

...Respondent

CORAM :

HON'BLE MR.JUSTICE ASHUTOSH MOHUNTA.

HON'BLE MR. JUSTICE MOHINDER PAL.

Present: Mr.Malkeet Singh, Advocate,
for the appellant.

Mr.Hemant Saini, Advocate,
for the respondents.

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MOHINDER PAL, J.

By filing this appeal, Balwant Singh (complainant-appellant) has impugned the judgment dated January 04, 1996, passed by the learned Additional Sessions Judge, Amritsar, in complaint case (**Balwant Singh v. Sewa Singh and others**) filed under Section 302 read with Section 34 of the Indian Penal Code (hereinafter referred to as `the Code) whereby accused-

respondents Sewa Singh alias Sewi, Smt. Raj and Kharaiti Lal were acquitted of the charge framed against them.

2. Leave to appeal against the respondents was granted by this Court under Section 304 of the Code on May 28, 1997, by passing the following order:-

" We have heard the learned counsel for the parties and have perused the impugned judgment. We are of the view that no case is made out for grant of leave against respondents under Section 302 IPC but prima facie it is a fit case to grant leave against respondents under Section 304 IPC. Accordingly, leave is granted against the respondents under Section 304 IPC.

Let appeal be registered. Appeal is admitted against respondents under Section 304 IPC."

3. The accused were made to face trial on the basis of complaint made by Balwant Singh (complainant), father of deceased Charanjit Singh alias Channi alias Gurcharan Singh. As per complainant, Charanjit Singh was having a love affair with Sunita, daughter of Sewa Singh alias Sewi and Smt. Raj, accused Nos. 1 and 2, respectively. Charanjit Singh and Sunita had decided to marry each other, which was opposed by the accused. They even threatened to eliminate the son of the complainant in case he continued to pursue his love affair with Sunita.

On May 25, 1988, at about 9 P.M, Charanjit Singh was forcibly abducted from the house of the complainant by the

accused and was killed. The complainant at that time was not present in the house and was working in the transformer repair workshop of Punjab State Electricity Board.

4. The complainant requested the police to register a case against the accused persons, but without any result. The complainant also made a report to Superintendent of Police (City), Amritsar, on June 03, 1988, but no action was taken. Resultantly, the complainant filed a complaint against the accused persons wherein it was stated that the occurrence was witnessed by Darshan Singh and Mohinder Singh.

5. Post mortem on the dead body of Charanjit Singh was conducted by Dr. Manraj Singh (P.W.1) on May 26, 1988, at 2 P.M and the following injuries were found:-

- " 1. An abrasion 3 x 2 cm on left side of chin.*
- 2. A reddish contusion 7 x 5 cm with an overlying four small abrasions present on the back of elbow joint and right upper arm in its lowermost part.*
- 3. An abrasion on inner side of right upper arm 2-1/2 cm in its lower one third.*
- 4. An abrasion 1-1/2 x 1/2 cm on front of right leg just below the knee joint.*
- 5. An abrasion 1-1/2 x 1 cm on the inner aspect of right leg in its middle.*
- 6. A reddish contusion 10 x 7 cms with two small abrasions present on back of left shoulder.*
- 7. An abrasion 2 x 1-1/2 cm on front of left shoulder.*

*8. An abrasion 2 x 1-1/2 cm on the left side of forehead
5 cm above left eye brow.*

9. A reddish contusion 5 x 3 cm over the left year.

*10. A reddish contusion 8 x 5 cm above the dorsum of
left hand.*

*11. A contusion 4 x 3 cm on right side of forehead just
on the hair line.*

*12. A reddish contusion 3 x 2-1/2 cm over the pi8nna of
right ear."*

In the opinion of the doctor, the death was due to shock and haemorrhage as a result of injury to brain, which was sufficient to cause death in the ordinary course of nature.

6. After recording of preliminary evidence by the trial Court, the accused were made to face trial under Section 302 read with Section 34 of the Code.

7. At the trial, the prosecution examined P.W.1 Dr.Manraj Singh, P.W.2 Balwant Singh (complainant), P.W.3 Darshan Singh and P.W.4 Mohinder Singh. The prosecution tendered into evidence copy of First Information Report (Exhibit P.C) and closed its case.

8. In their statements recorded under Section 313 of the Code of Criminal Procedure, the accused denied the prosecution allegations and pleaded innocence. They, however, did not lead any evidence in defence.

Learned Additional District and Sessions Judge, Amritsar, while taking into account the delay in filing the complaint and

discarding the statements of Darshan Singh and Mohinder Singh. acquitted the accused persons. Hence this appeal by the complainant.

9. We have heard Mr. Malkeet Singh, Advocate, appearing for the appellant and Mr. Hemant Saini, Advocate, appearing for the respondents and have gone through the records.

10 Learned counsel for the appellant has mainly relied upon the evidence P.W. 2 Balwant Singh (complainant) and has contended that Charanjit Singh (deceased), son of the complainant, had a love affair with Sunita, daughter of accused Sewa Singh and Smt. Raj and as these persons were against this relationship, they committed the murder of Charanjit Singh. He further argued that the reasoning recorded by the trial Court regarding the delay in filing of the complaint was not relevant in this case as police was not ready to register the case against the accused. He contended that the motive in this case was sufficiently proved. He referred to the statements of the eye-witnesses, namely, P.W.3 Darshan Singh and P.W.4 Mohinder Singh and argued that the findings of the learned trial Court are perverse. Finally, he has argued that the own admission of Sewa Singh for causing injuries to Charanjit Singh in his statement under Section 313 of the Code of Criminal Procedure was sufficient to prove guilt of the accused persons.

11. In the absence of First Information Report, the Court is left with no option except to appreciate the evidence of material witnesses. Admittedly, Charanjit Singh died of unnatural death, which is proved from the injuries recorded by Dr. Manraj Singh

(P.W.1), reproduced above. Balwant Singh (P.W.2), author of complaint moved in the Court, has reiterated the facts mentioned in the earlier part of the judgment. In his cross-examination, he has admitted that he made the complaint at the instance of P.W.3 Darshan Singh and P.W.4 Mohinder Singh. He further admitted that he did not make any report to the police even after he came to know about the death of his son at the hands of the accused. He made no efforts to take Darshan Singh and Mohinder Singh, the alleged eye-witnesses of the murder of Charanjit Singh, to the Police Station nor narrated any incident in this regard to the Incharge of the Police Post. He admitted that Sewa Singh (accused No.1) had got registered a case against his son Charanjit Singh vide First Information Report No.225 of 1988 of Police Station Sadar, Amritsar, under Sections 354/ 456/ 506/ 376/511 of the Code. He has further admitted that his son was prosecuted in another case under Section 307 of the Code. He failed to deny the suggestion that Charanjit Singh was involved in four/five other cases of Police Station Sadar, Amritsar, or that his son was a vagabond and was required to mark his presence in the Police Station every month. The other evidence available on the file is in the form of P.W.3 Darshan Singh and P.W.4 Mohinder Singh. Both these witnesses admitted in many words that they did not disclose the occurrence to any one. They did not come forward to rescue Charanjit Singh nor they raised any alarm when the accused persons were giving a beating to the deceased. They were not in a position to tell as to how many persons had collected at the time of occurrence. They

even failed to name a single person who was present at the time of occurrence. Both these witnesses are discrepant on the point whether C.R.P.F resorted to 'Lathicharge' at the time when Charanjit Singh was being given a beating by the people who had gathered at the place of occurrence.

12. The evidence put forth by the prosecution in this case is insufficient to explain as to which of the accused gave which injury to the deceased. The evidence is further deficient to prove the allegation that Charanjit Singh had entered the house of Sewa Singh and Smt. Raj (accused Nos. 1 and 2) in order to commit rape upon Sunita, their daughter. The evidence is further silent on the point as to when Darshan Singh and Mohinder Singh, the alleged eye-witnesses, disclosed the occurrence to the complainant. Further, these star witnesses failed to make a mention of the incident to anybody in the locality. The argument of learned counsel for the appellant regarding statement of Sewa Singh under Section 313 of the Code of Criminal Procedure cannot be appreciated as prosecution or the complainant has to prove the case independently.

13. The trial Court was justified in drawing a conclusion that the prosecution has miserably failed to establish the guilt of the accused; that the delay in lodging the complaint is fatal; and that the names of Darshan Singh (P.W.3) and Mohinder Singh (P.W.4) have been introduced by the complainant after due deliberations and consultations. It is well-settled that reappraisal of evidence in appeal against the judgment of acquittal is permissible where admissible evidence

has been ignored. Further, the Appellate Court can interfere only when there are compelling or substantial reasons for doing so. If the impugned judgment is clearly unreasonable, it is a compelling reason for interference. In this case, the impugned judgment is reasoned one. There is no possibility of two views.

So, we refrain from interfering in the impugned judgment of acquittal and dismiss the appeal.

(MOHINDER PAL)
JUDGE

October 08, 2007.
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(ASHUTOSH MOHUNTA)
JUDGE